

DEC 20 1993

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December 20, 1993

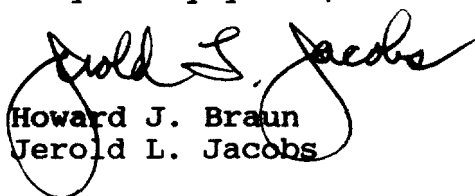
William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554Re: MM Docket No. 93-290
Notice of Proposed Rule Making
To Amend §76.51(a)(1) of the Rules

Dear Mr. Caton:

Enclosed for filing, on behalf of our client, WLIG-TV, Inc. ("WLIG"), licensee of Station WLIG(TV), Riverhead, New York, are an original and nine (9) copies of the "Comments of WLIG-TV, Inc." ("Comments") in response to the Notice of Proposed Rule Making in MM Docket No. 93-290, DA 93-1349, released November 16, 1993. WLIG's Comments fully support amending §76.51(a)(1) of the cable television rules to add Riverhead to the New York, N.Y. -Linden-Paterson-Newark, N.J. major television market (#1).

Please direct any inquiries or correspondence concerning this matter to the undersigned.

Very truly yours,


Howard J. Braun
Jerold L. Jacobs

Enc.

cc: Roy J. Stewart, Chief, Mass Media Bureau
William H. Johnson, Deputy Chief, Mass Media Bureau
Alexandra Wilson, Acting Chief, Cable Services Bureau
Alan E. Aronowitz, Esq. (ALL FCC - BY HAND - w/enc.)

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DEC 20 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 76.51 of the
Commission's Rules to Include Newton,
New Jersey and Riverhead, New York
in the New York, New York -
Linden-Paterson-Newark, New Jersey
Television Market

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) MM Docket No. 93-290
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TO: Chief, Mass Media Bureau

COMMENTS OF WLIG-TV, INC.

WLIG-TV, INC.

Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN
1300 - 19th Street, N.W.
Suite 200
Washington, D.C. 20036

Its Attorneys

Dated: December 20, 1993

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SUMMARY

WLIG-TV, Inc. ("WLIG"), licensee of Station WLIG(TV) (Ind., Chan. 55), Riverhead, New York, fully supports amending the cable rules to add Riverhead, New York to the New York, N.Y. - Linden-Paterson-Newark, N.J. major market (the "New York - New Jersey" market).

WLIG emphasizes two reasons for a Riverhead hyphenation. The first is to cure the existing competitive imbalance between WLIG and the eight commercial TV stations licensed to the presently hyphenated communities in the New York - New Jersey market (the "Hyphenated Community Stations").

Thus, although WLIG operates within the New York ADI along with the Hyphenated Community Stations, when national advertisers "buy" Long Island on broadcast TV, they do so by advertising on the Hyphenated Community Stations, whose Grade B contours paradoxically encompass much less of Long Island than WLIG does, rather than by advertising on WLIG. WLIG competes with the Hyphenated Community Stations in a "tri-state" or "tri-metro" area comprising the New York ADI for national advertising, audience measurement, audience, and programming. WLIG maintains that hyphenation is needed so that it can fully participate in the New York ADI, which is a single market for national advertising and of which it is a physical and economic part.

The second major justification for a Riverhead hyphenation is to protect WLIG against staggering copyright liability in certain cable communities in which WLIG is currently deemed to be a distant signal under cable copyright law, even

though it is a must-carry station. WLIG faces millions of dollars of potential copyright liability unless the Riverhead hyphenation is approved and WLIG is treated as a local signal throughout the New York ADI. The fact that the Hyphenated Community Stations, which are must-carry stations just like WLIG, do not have to pay any copyright indemnity further shows the competitive imbalance which WLIG currently faces.

While a Riverhead hyphenation will also help alleviate WLIG's concern about syndicated program exclusivity "black-outs" on cable systems, this concern is much less significant than WLIG's need for copyright relief and competitive equality for advertising and audience within the New York ADI. Therefore, WLIG opposes any non-hyphenation regulatory solution which would only protect WLIG against blackouts.

Likewise, WLIG strongly opposes any "partial" hyphenation of the New York - New Jersey market. Placing New York City in two markets would continue and even increase the competitive imbalance which exists in the New York ADI, because it ensures that the most powerful stations in the ADI (the New York City stations) will retain their hyphenation-related exclusivity and copyright liability advantages in both New York City hyphenated markets while WLIG would not be protected in a major portion of the ADI. The New York ADI is a single market for national advertising, which should not be artificially subdivided to the competitive disadvantage of WLIG.

In sum, a Riverhead hyphenation is consistent with economic reality, cable law and policy, and the paramount public interest.

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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

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Amendment of Section 76.51 of the)
Commission's Rules to Include Newton,)
New Jersey and Riverhead, New York)
in the New York, New York -)
Linden-Paterson-Newark, New Jersey)
Television Market)

MM Docket No. 93-290

TO: Chief, Mass Media Bureau

COMMENTS OF WLIG-TV, INC.

WLIG-TV, Inc. ("WLIG"), licensee of Station WLIG(TV), Riverhead, New York, by its attorneys, pursuant to §1.415 of the Commission's Rules, hereby submits its Comments on the Notice of Proposed Rule Making ("NPRM"), DA 93-1349, released November 16, 1993, in this proceeding. In support whereof, WLIG shows the following:

I. Introduction

1. This proceeding was initiated, in part, at the request of WLIG, which is seeking the addition of Riverhead, New York -- the city of license of its Station WLIG(TV) (Ind., Channel 55) -- to the existing New York, N.Y.-Linden-Paterson-Newark, N.J. major market (#1) (the "New York - New Jersey" market) in §76.51(a)(1) of the Commission's cable television rules.

2. As pointed out in its Petition for Rulemaking ("Petition"), while Station WLIG's predicted Grade B contour

encompasses all or part of the New York State counties of Nassau, Suffolk, Queens, Bronx, and Westchester and the Connecticut counties of Fairfield and New Haven, and while it is the only full-time full service independent commercial TV station licensed to a Long Island community, WLIG currently suffers a severe competitive imbalance and handicap against the eight commercial TV stations¹ licensed to the presently hyphenated communities in the New York - New Jersey market ("Hyphenated Community Stations") for sales, promotion, audience measurement, and programming purposes. The New York Area of Dominant Influence ("ADI") largely coincides with the New York - New Jersey market, and, as WLIG will now demonstrate, hyphenating that market to include Riverhead is fully consistent with evolving Commission and Congressional law and policy and will equalize competition within the market.

3. In §614(f) of the Communications Act of 1934 as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("the Cable Act"), Pub. L. No. 102-385, 106 Stat. 1460 (1992), Congress instructed the Commission to "update" its hyphenated market list -- §76.51. Although Congress provided no specific guidance for this task, there is no evidence that it intended the Commission to use the updating process to undercut the Congressional finding (see Paragraph 16 below) that the ADI establishes a TV station's

¹ Those stations are: WCBS-TV, WNBC-TV, WNYW, WABC-TV, and WPIX, New York, New York; WXTV, Paterson, New Jersey; WNJU, Linden, New Jersey, and WHSE, Newark, New Jersey.

local market for buying programming and selling advertising, or that the updating process should create or exacerbate competitive inequality in hyphenated markets. The Commission addressed the matter in its Report and Order in MM Docket No. 92-259, 8 FCC Rcd 2965, 2977-79 (1993), and established the general standard that case-by-case changes in \$76.51 would be appropriate upon showings of "commonality between the proposed community to be added to a market designation and the market as a whole." Id. at 2978.

4. In accordance with the Commission's guidelines, WLIG's Petition emphasized three reasons for a Riverhead hyphenation, which are summarized in the NPRM. The first -- and most important -- is to cure the existing competitive imbalance between WLIG and the Hyphenated Community Stations. While WLIG operates within the New York ADI along with the Hyphenated Community Stations, its advertising has continued to be local with only nominal national advertising revenues. When national advertisers "buy" Long Island on broadcast TV, they do so by advertising on the Hyphenated Community Stations, whose Grade B contours paradoxically encompass much less of Long Island than WLIG does, rather than by advertising on WLIG.

5. A major reason that national advertisers do not consider WLIG to be a New York ADI station and do not "buy" Long Island through WLIG is that Riverhead is not included as a hyphenated community in the New York - New Jersey market.

Yet WLIG's economic prosperity is dependent upon competing throughout the New York ADI. Thus, in the real world of national advertising, WLIG competes with the Hyphenated Community Stations in a "tri-state" area (really a "tri-metro" area) comprising the New York ADI for national advertising, audience measurement,² audience, and programming. WLIG maintains that hyphenation is needed so that it can fully participate in the ADI, which is a single market for national advertising and of which it is a physical and economic part. Equalizing competition between WLIG and the Hyphenated Community Stations requires Riverhead to be recognized as a designated community within the New York - New Jersey market.

6. The second justification for a Riverhead hyphenation is to protect Station WLIG against staggering copyright liability in certain cable communities in which WLIG is currently deemed to be a distant signal under the cable compulsory copyright license, 17 U.S.C. §111, even though it is a must-carry station. The reason is that Riverhead is not presently a designated community in the New York - New Jersey market. Hence, where a cable system is located within the New York ADI but beyond Riverhead's 35-mile zone, WLIG ceases to be a must-carry station unless it agrees to indemnify said cable system for any increased copyright liability resulting from carriage on that system. See §76.55(c)(2) of the Rules.

² Audience measurement is done on an ADI-wide basis by the national rating services, and, in turn, national advertising is sold on an ADI-wide basis.

7. Like the Newton, New Jersey petitioner herein (Station WMBC-TV), WLIG faces millions of dollars of potential copyright liability unless the Riverhead hyphenation is approved and WLIG is treated as a local signal throughout the New York ADI. Attached as Exhibit 1 is a letter from a market cable system, which estimates that the WLIG's copyright liability for carriage by that system alone could be as high as \$1.6 million annually.

8. Importantly, in Amendment of Section 76.51 (Los Angeles-San Bernardino-Corona-Fontana CA), DA 93-1444, ¶¶4-5, released December 7, 1993, the Commission held that such copyright relief to Station KRCA(TV) (Ind., Channel 62), Riverside, California was a significant reason for adding a Riverside hyphenation to the Los Angeles market. WLIG maintains that the Riverside case fully supports WLIG's hyphenation request. Moreover, the fact that the Hyphenated Community Stations, which are must-carry stations just like WLIG, do not have to pay any copyright indemnity further illustrates the competitive imbalance which WLIG currently faces without hyphenation, since this significant extra expense affects WLIG only.

9. WLIG's third rationale for a Riverhead hyphenation concerns preventing situations in which WLIG may face syndicated program exclusivity "blackouts" on cable systems in favor of Hyphenated Community Stations with the same programming, even though both stations have must-carry rights. How-

ever, as WLIG will explain below, this blackout concern is much less significant than WLIG's need for copyright relief and competitive equality for advertising and audience within the New York ADI. Thus, WLIG is strongly opposed to any regulatory solution in this proceeding which addresses blackouts without also providing competitive and copyright relief to WLIG.

II. WLIG Supports Adding Riverhead to the Hyphenated Market

10. WLIG fully supports the NPRM's proposal (at ¶13) to add Riverhead to the New York - New Jersey market. However, WLIG takes no position on the proposal to add any other communities besides Riverhead.

11. The appropriate substantive principles for hyphenating markets are fully and correctly set forth in the Commission's recent Clermont, Florida hyphenation decision -- Report and Order in MM Docket No. 92-306 (Orlando-Daytona Beach-Melbourne-Cocoa FL market), 8 FCC Rcd 3667 (MM Bur. 1993). There, in holding that Clermont should be added to the Orlando-Daytona Beach market, the Commission noted, id. at 3667, that the Clermont station and the other market stations: (1) have coverage areas that substantially overlap; (2) the stations do, in fact, compete for audiences throughout the market area, thus establishing their economic interdependence; (3) Clermont is within the Orlando-Daytona Beach-Melbourne ADI; and (4) "sufficient competitive commonality [exists] such

that the proposed market redesignation appropriately delineates the areas where market-area stations can and do, both actually and logically, compete". WLIG submits that all of these criteria and findings apply equally well to the addition of Riverhead as a hyphenated community in the New York - New Jersey market (as WLIG fully elaborated in its Petition at ¶¶6-10).

12. In this connection, WLIG particularly emphasizes the reality of "ADI-wide" competition for national advertising and audience in the New York - New Jersey market. In these hyphenation proceedings, the Commission is correctly focusing on making its cable rules match economic reality, and the proposed hyphenation of Riverhead will help do that. On the other hand, excluding Riverhead is strictly artificial, and, as explained above, such exclusion has severe competitive inequality and copyright liability consequences.

13. Moreover, the Commission has long recognized that there is nothing inappropriate about increasing the number of hyphenated communities in a hyphenated market such as New York - New Jersey (or Orlando - Daytona Beach, supra), if the resulting hyphenated market mirrors economic reality. Thus, when the Commission adopted its multi-faceted cable television regulatory program of the 1970's in the Cable Television Report and Order, 36 FCC 2d 143, 176 ¶87 (1972), it specifically discussed the rationale underlying the use of hyphenated

markets in the Commission's program for mandatory carriage of local television signals and stated (emphasis added):

In such [hyphenated] markets, characterized by more than one major population center supporting all stations in the market but with competing stations licensed to different cities within the market area, we will... require carriage of all stations licensed to designated communities in the market. Because of the structure of these markets, including the terrain and population distribution, portions of the market are occasionally located beyond the Grade B contours of some market stations. Consequently, we are adopting this rule in order to help equalize competition between stations in markets of this type, and to assure that stations will have access to cable subscribers in the market and that cable subscribers will have access to all stations in the market.

Hence, historically the Commission has readily accepted hyphenation of several communities in markets such as New York - New Jersey in order to "equalize competition" among market stations and assure cable carriage of all market stations. This policy fully coincides with the "ADI" definition of local market which is embodied in §614 of the Cable Act, supra and in the Commission's implementing must-carry rules.

III. WLIG Opposes Proposal to "Partially" Hyphenate the New York - New Jersey Market

14. The NPRM (at ¶16) also seeks comment on the possibility of "partially" hyphenating the New York - New Jersey market. Although unclear, this proposal appears to envision creation of two markets -- a New York City/Newton or New York City/New Jersey market and a separate New York City/Riverhead or New York City/Long Island market. What is clear is that

Riverhead and Newton would not be part of the same market. WLIG strongly opposes any such artificial hyphenation.

15. Any "partial" hyphenation idea would place New York City in two markets and would therefore continue -- and even increase -- the competitive imbalance which exists in the New York ADI. The reason is that such a "partial" hyphenation ensures that the most powerful stations in the ADI -- the New York City stations -- will retain their hyphenation-related exclusivity and copyright liability advantages in both New York City hyphenated markets while WLIG would not be protected in a major portion of the New York ADI.

16. Furthermore, in House Report 102-628 at 97 (June 29, 1992), which accompanied H.R. 4850 -- the forerunner of the Cable Act, the House Committee on Energy and Commerce stated (emphasis added):

The Committee recognizes that ADI lines establish the market in which television [stations] buy programming and sell advertising...The Committee believes that ADI lines are the most widely accepted definition of a television market and more accurately delineate the area in which a station provides local service than any arbitrary mileage-based definition.

Consistent with this Congressional finding, which reflects a well-established broadcast industry concept, WLIG maintains that no "partial" hyphenation is realistic or appropriate in the instant case. The New York ADI is a single market for national advertising, which should not be subdivided or carved up to the competitive disadvantage of WLIG. The cable rules

should mirror economic reality, not create an artificial construct.

**IV. Syndicated Exclusivity Protection Is Inadequate
for WLIG Without Hyphenation**

17. As discussed in WLIG's Petition (at ¶8, pp. 10-11), because Riverhead is more than 35 miles away from New York City, WLIG cannot buy exclusive programming rights against the Hyphenated Community Stations, and vice-versa. This means, for instance, that on systems inside the New York City 35-mile zone, a New York City station will be entitled to syndicated program exclusivity protection (assuming it has bargained for it) against duplicative syndicated programming broadcast by WLIG, even though both stations have must-carry rights on those systems and are therefore entitled to full-time carriage. By adding Riverhead to the New York - New Jersey market, the Commission will allow WLIG to purchase exclusive programming rights against the Hyphenated Community Stations and thereby eliminate the potential for syndicated exclusivity blackouts between must-carry stations.

18. In response to WLIG's blackout concern, the NPRM (at ¶14) proposes that WLIG might qualify for a waiver of the exclusivity rules in lieu of hyphenating the New York - New Jersey market. As WLIG stated in Paragraph 9 above, this is not a viable solution to WLIG's most serious problems, which relate to copyright liability and inequality of competition for advertising revenues. Although a syndicated exclusivity

waiver might resolve the blackout problem, only a Riverhead hyphenation will cure WLIG's copyright liability and competitive imbalance problems. Indeed, if the Commission determines that WLIG should be given nothing more than an exclusivity waiver in this proceeding, WLIG would prefer to decline such a waiver and withdraw its Petition. In WLIG's view, nothing less than hyphenation will save it from its competitive and copyright problems, so that failure to grant WLIG's hyphenation proposal will have serious adverse consequences for WLIG.

V. Conclusion


19. WLIG has shown in its Petition and in these Comments that its abilities to compete effectively with the Hyphenated Community Stations and to serve the entire New York ADI programmatically are hindered by present §76.51(a)(1) of the Rules, which does not include Riverhead as a designated community. Hyphenation is needed to permit WLIG to compete for national advertising, audience measurement, audience, and programming. It will also provide WLIG with the economic support necessary to continue and expand its local and regional news coverage and to increase substantially its public affairs and other non-entertainment programming. WLIG urges that this anticipated public benefit is an additional reason for favorable Commission action here. In sum, grant of WLIG's Petition is fully consistent with economic reality, recent Commission policy and case precedents, amended §614 of

the Communications Act of 1934, and the paramount public interest.

WHEREFORE, in light of the foregoing, WLIG-TV, Inc. respectfully requests that the Commission should amend §76.51(a)(1) of the Rules and add Riverhead, New York to the New York - New Jersey market.

Respectfully submitted,

WLIG-TV, Inc.

By: 
Howard J. Braun
Jerold L. Jacobs

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Its Attorneys

Dated: December 20, 1993



Suburban Cablevision

A Blackman Hunter Company

June 7, 1993

Mr. Marvin Chauvin
Vice President & General Manager
WLIG - TV 55
270 South Service Road
P.O. Box 1355
Melville, New York 11747

Dear Mr. Chauvin:

I am writing in response to your letter of May 13, 1993.

On this issue of signal quality, we would be pleased to allow your engineering people access to our headend in order to conduct tests on signal strength. To arrange for this, please call Larry Beauchamp, our Manager of Engineering Services at 908-851-8859.

Suburban Cablevision has approximately 230,000 subscribers, and currently has gross receipts of approximately \$45,000,000 that are subject to copyright royalties. Adding WLIG to our system would result in additional copyright fees of either 3.75% of the approximately 45 million, which currently is approximately \$1,687,500 annually, or 2.857% of the approximately 45 million, which currently is approximately \$1,293,750 annually, depending on whether it is the first or second distant signal added to the system. Please note that these are estimates and that actual copyright liability will depend on actual revenues in future years.

Please have your attorney send me a draft agreement in which your station agrees to pay Suburban annually an amount equal to Suburban's increased copyright liability that results from carriage. I will review this agreement with our attorney and give you our input on it as soon as possible.

Sincerely,

Greg Vandervort
Vice President
Marketing & Administration

GV/jer
Enclosure

